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PLEADING AND PRACTICE — SUMMONS — AMENDMENT. — A summons called on the defendant to answer in six instead of twenty days as provided in §418 of the New York Code of Civil Procedure. The defendant moved to vacate the judgment; the plaintiff made a counter motion for an order permitting him to amend the summons. *Held*, since the error constituted a jurisdictional defect, the court had no power to grant leave to amend. *Schoffel v. Goodstein* (N. Y. 1919) 107 Misc. 695.

Although the contents of a summons enumerated in §417 of the Code of Civil Procedure are denominated "requisites," the omission of any one of them does not invalidate the summons. Failure in the summons correctly to name the defendant, *Stuyvesant v. Weil* (1901) 167 N. Y. 421, 60 N. E. 738; see *Corn v. Heymsfeld* (1912) 75 Misc. 478, 133 N. Y. Supp. 447, to state the county in which the plaintiff desires trial, *Wallace v. Dimmick* (1881) 24 Hun. 635; *Thomson v. Tilden* (1898) 24 Misc. 513, 53 N. Y. Supp. 920; *contra*, *Osborn v. McCloskey* (1878) 55 How. Pr. 345, to include the name of the plaintiff's attorney, *Hull v. Canandaigua, etc. Co.* (1900) 55 App. Div. 419, 66 N. Y. Supp. 865, or to state the office address, post office address and street number of the plaintiff's attorney, *Wiggins v. Richmond* (1879) 58 How. Pr. 376, have all been held not to create jurisdictional defects, if the defendant has not been misled, *Hull v. Canandaigua, etc. Co.*, *supra*, but have been treated as irregularities only, and this, although each is specifically designated a "requisite." Since a statement of the time in which the defendant's answer is returnable is not even one of the so-called "requisites" mentioned in §417 and in view of the fact that the defendant must be taken to have known that under §421 of the Code of Civil Procedure, he had twenty days in which to answer and, therefore, could hardly contend that he had been misled, it would seem that the court in the principal case erred in dismissing the plaintiff's motion. And even on its own analysis, the court appears to have gone astray, for it distinguishes the instant case from *Gribbon v. Freel* (1883) 93 N. Y. 93. It observes that in that case a failure to specify the correct time in which the defendant was to answer might well have been corrected by amendment, since jurisdiction had already been obtained by an attachment. But it fails to note that the continuance of this jurisdiction more than thirty days after obtaining the warrant,—that is to say, at the time of trial, depended on whether or not the defendant had been served with process within the thirty days. *Cf.* §§416, 638. The granting of leave to amend leads, therefore, to the conclusion that the court in *Gribbon v. Freel*, *supra*, decided that it was not the attachment but the service of a summons, irregular though it was, that effected jurisdiction at the time the question arose and prevented the efficacy of the jurisdiction gained by the attachment from lapsing. This is far from holding that had there been no attachment, the summons would have conferred no jurisdiction over the defendant's person. This is borne out by the fact that in a later case, the court, travelling on the theory that there must be a summons issued in order to give it jurisdiction to grant a warrant of

attachment, *Thomson v. Tilden*, *supra*, and citing *Gribbon v. Freel*, *supra*, with approval, held that a summons which failed to state the county in which trial was desired was good enough to defeat a motion to vacate the warrant where lack of jurisdiction was claimed.

TORTS—OPERATION OF RAILROADS—PROXIMATE CAUSE.—The defendant's train crew saw a fire on one side of the track, and fire engines approaching from the other side, but nevertheless proceeded on with the train and blocked the crossings, though it would have been practicable for them to have stopped and left the way clear. The property owner sued for damage due to the consequent delay. *Held*, one judge dissenting, it was error to dismiss the complaint, *Globe Malleable Iron & Steel Co. v. New York Cent. & H. R. R. R.* (N. Y. 1919) 124 N. E. 109.

It is well settled that though a railroad does not start the fire, yet the delay caused by its conduct may be the proximate cause of the increased damage. *Erickson v. Great Northern Ry.* (1912) 117 Minn. 348, 135 N. W. 1129; *Phoenix Insurance Co. v. New York Central & H. R. R. R.* (1907) 122 App. Div. 113, 106 N. Y. Supp. 696, *aff'd* (1909) 196 N. Y. 554, 90 N. E. 1164; *Houren v. Chicago etc. Ry.* (1908) 236 Ill. 620, 86 N. E. 611, whether that conduct is active, *Metallic Compression Casting Co. v. Fitchburg R. R.* (1872) 109 Mass. 277, or passive. *Houren v. Chicago etc. Ry.*, *supra*; *contra*, *Louisville & Nashville R. R. v. Scruggs & Echols* (1909) 161 Ala. 97, 49 So. 399. It is also established that in cases like the instant one the public safety is paramount to the right of the defendant to use its property in an otherwise lawful manner, *Metallic Compression Casting Co. v. Fitchburg R. R.*, *supra*, and that the question of proximate cause and of negligence should properly be left to the jury. *Cf. Milwaukee & St. Paul Ry. v. Kellogg* (1876) 94 U. S. 469; see *Cleveland etc. Ry. v. Tauer* (1911) 176 Ind. 621, 96 N. E. 758.

WATERS AND WATER-COURSES—RIPARIAN OWNER—NATURE OF RIGHT.—The City of New York, by damming up Esopus Creek, in order to acquire more water for the Ashokan Reservoir, dried up the creek below the dam so as permanently to deprive the claimant, a lower riparian owner, of his natural right to have the water flow past his land substantially undiminished. *Semble*, this is a corporeal right. *Van Etten v. City of New York* (N. Y. 1919) 124 N. E. 201.

It must be admitted that, strictly speaking, all rights are incorporeal, in the sense that they have no physical existence. But the common-law lawyers made the distinction between corporeal and incorporeal rights and it is interesting to determine what was the line of their distinction. Blackstone states in his Commentaries, 2 Bl. Comm. *20, that "corporeal hereditaments are the substance, which may be always seen, always handled: incorporeal hereditaments are but a sort of accidents, which inhere in and are supported by that substance." But, says Digby, *Real Property* (5th ed.) 306 n. 2, "The names 'corporeal and incorporeal' are most unfortunate, because if by